

(2010) 03 DEL CK 0029
In the Delhi High Court
Case No : Writ Petition (C) 2166 of 2004

Sh. Nandji

APPELLANT

Vs

Renutrol Limited

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(3), 33, 33A

Citation : (2010) 03 DEL CK 0029

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.K. Anand, for the Appellant; Gulshan Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner workman impugns the order dated 4th March, 2003 of the Industrial Tribunal dismissing the complaint of the petitioner against the respondent employer u/s 33A of the I.D. Act. The petitioner in the complaint stated that the respondent employer, during the pendency of industrial dispute No. 76/1991 & industrial dispute No. 77/1991, with the following reference:

Whether there was a lock out with effect from 15th March, 1991? If so, whether the workman shown in Annexure-A are entitled to wages for the lock out period and if so, what directions are necessary in this respect?

without holding any enquiry or serving any charge-sheet on the petitioner workman had dismissed him from employment to victimize him because of trade union activities. It was further stated that though an application u/s 33(ii)(b) of the Act had been filed by the respondent employer on 3rd September, 1991 but the same had been withdrawn in or about the year 1996 and as such the respondent/employer had violated the provisions of Section 33 of the Act.

2. The Tribunal found

A. that while the dismissal of the petitioner was on 15th March, 1991, the reference order in Industrial Disputes No. 76/1991 & 77/1991 was of 10th April, 1991. It was thus held that no case of violation of Section 33 was made out.

B. that the plea of the respondent employer in Industrial Disputes No. 76-77/1991 was that the same did not constitute an industrial dispute and the said plea had been accepted and in those disputes award had been made holding that there were no industrial dispute. The Tribunal thus held that it having been held that the dispute on the basis whereof complaint was filed was not an industrial dispute, Section 33 was not attracted.

C. that the application u/s 33(ii)(b) was filed by the respondent employer because of pendency of another Industrial Dispute No. 526/1983. However, in that also, an award had been made on 1st December, 1995 holding the same also to be not an industrial dispute. It was also noticed that the complaint of the petitioner u/s 33A was not based on the said reference.

D. It was thus held that the respondent employer was justified in withdrawing the application u/s 33(ii)(b).

The Tribunal thus held that no case of violation of Section 33 was made out and accordingly the complaint u/s 33A was not maintainable.

3. The petitioner has neither pleaded that any of the factual findings aforesaid of the Tribunal are incorrect nor filed any document to controvert the same. The argument of the counsel for the petitioner is single point. It is stated that the complaint u/s 33A of the Act and Industrial Disputes No. 76-77/1991 had been consolidated vide order dated 5th July, 1999 of the Tribunal and copy whereof has been filed as Annexure-H to this petition. The counsel contends that the Tribunal has not only dismissed the complaint u/s 33A vide order impugned in this petition but also made the award on Industrial Disputes No. 76-77/1991 for the reason of no evidence having been led thereon. It is argued that the order is thus bad in law.

4. It was put to the counsel for the petitioner as to whether the petitioner has challenged the award of the Tribunal in Industrial Disputes No. 76- 77/1991. The counsel states that he has no knowledge in that regard. He further contends that even in the complaint case u/s 33A of the Act, subject matter of this petition, the following issues were framed by the Tribunal:

(i) Whether the complaint / petition u/s 33A of the Industrial Dispute Act is maintainable or not (OPM)?

(ii) Whether the dismissal of workman is unjustified, illegal and against the principles of natural justice?

(iii) Relief, if any.

He contends that the Tribunal has in the impugned order only answered the issue No. (i) and not answered the issued No. (ii) (supra).

5. The Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, , relied on by the counsel himself had held that "In an enquiry u/s 33A the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of Section 33 by the employer; after such contravention is proved it would still be open to the employer to justify the impugned dismissal on merits; that is a part of the dispute which the tribunal has to consider because the complaint made by the employee is treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered u/s 33A". Even though the said judgment is now no longer good law in view of pronouncement in *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others*, but it explains the framing of issue (ii) (supra). In fact, the only prayer of the petitioner in his complaint u/s 33A was for his reinstatement with full back wages.

Be that as it may, even as per the judgment (supra), the question of the Tribunal to go into the validity of action of employer of dismissing the petitioner was to arise only in the event of contravention of Section 33 being established. In the present case, the Tribunal having found Section 33 to be not attracted, the need to adjudicate issue No. (ii) supra did not arise.

6. As far as the contention of the counsel for the petitioner of the proceedings in the Industrial Dispute No. 76-77/199 1 and in the complaint u/s 33A having been consolidated, the counsel for the respondent controverts the same. A reading of the order dated 5th July, 1999 also does not show that there was any such order of consolidation. Moreover, even if there was consolidation and the same has resulted in any error in the disposal of the industrial dispute, the same would be a case for challenging the award in the industrial dispute and will not be a ground for impugning the order on the complaint u/s 33A of the Act. I may mention that the petitioner has not even bothered to place before this Court, the award on the Industrial Dispute No. 76-77/1 991.

7. The petitioner has in the petition also sought to raise a bogey of the impugned order not recording that Industrial Dispute No. 77/199 1 had been adjudicated by the date of the impugned order. However, the impugned order records in para 13 thereof that Industrial Dispute No. 77/1991 was given to the order u/s 10(3) of the Authorities; and the same cannot be termed as a reference and the dispute referred was Industrial Dispute No. 76/1991 only, the terms of reference whereof had been amended in terms of order of this Court in earlier writ petition challenging the order u/s 10(3) of the Act. The said facts have not been controverted. 8. The counsel for the petitioner after the close of hearing has filed photocopies of judgments namely:

(i) *Air India Ltd. and Others Vs. Vishal Capoor and Others*,

(ii) *Gujarat Agricultural University Vs. All Gujarat Kamdar Karmachari Union*,

(iii) *D.P. Maheshwari Vs. Delhi Administration and Others*,

(iv) M.D., Tamil Nadu State Transport Corporation Vs. Neethivilangan Kumbakonam,

(v) Management of National Power Supply Corporation v. State of Assam AIR 1963 Assam 24.

(vi) Mcleod and Co. Vs. Sixth Industrial Tribunal, West Bengal and Others,

However, neither of the said judgments is found apposite the matter in controversy.

9. This writ petition is therefore found to be misconceived. I however refrain myself from imposing any costs on the petitioner. The petition is dismissed.